

JS 44 (Rev. 12/07) (cand rev 1-16-08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

THE STATE OF CALIFORNIA and THE CALIFORNIA DEPARTMENT OF GENERAL SERVICES

**DEFENDANTS**

PACIFIC INDEMNITY COMPANY

(1)

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)  
**State of California**

(c) Attorney's (Firm Name, Address, and Telephone Number)

JUDITH LOACH, Deputy Attorney General  
Department of Justice, Office of the Attorney General  
P.O. Box 70550, 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550  
Telephone: (510) 622-2199

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

07-3717-EDL

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |   |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)                     |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | PTF  | DEF  | PTF                        | DEF                                   |
|--|--|----------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> 1 Citizen of This State        | <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| <input type="checkbox"/> 2 Citizen of Another State                | <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| <input type="checkbox"/> 3 Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input checked="" type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>610 Agriculture</b> <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>REAL PROPERTY</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			<b>LABOR</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<b>IMMIGRATION</b> <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- |   |   |  |   |                            |   |   |   |
|---|---|--|---|----------------------------|---|---|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | Transferred from (specify) | <input type="checkbox"/> 5 another district | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Judge from Magistrate Judgment |
|---|---|--|---|----------------------------|---|---|---|

Transferred from

(specify)

Appeal to District

Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Section 1332

Brief description of cause:

Insurance duty to defend - declaratory relief

**VI. CAUSE OF ACTION**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
**DEMAND \$**  
**Declaratory Relief**

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VII. REQUESTED IN COMPLAINT:**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE  
**"NOTICE OF RELATED CASE".**

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)**  
**(PLACE AND "X" IN ONE BOX ONLY)** SAN FRANCISCO/OAKLAND SAN JOSE

DATE

August 1, 2008

SIGNATURE OF ATTORNEY OF RECORD

1 EDMUND G. BROWN JR.  
2 Attorney General of the State of California  
2 TYLER B. PON, State Bar No. 67167  
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8  
9 Attorneys for Plaintiffs  
10 THE STATE OF CALIFORNIA and THE  
CALIFORNIA DEPARTMENT OF GENERAL  
SERVICES

FILED  
AUG 4 2008  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
1

11  
12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 **CV** **08** **3717**  
15 **THE STATE OF CALIFORNIA and THE**  
**CALIFORNIA DEPARTMENT OF**  
**GENERAL SERVICES,**

16 Plaintiffs,  
17 v.  
18  
19 **PACIFIC INDEMNITY COMPANY,**  
20 Defendant.

Case No.

**COMPLAINT FOR DECLARATORY  
RELIEF (DUTY TO DEFEND)**

Courtroom:

Judge:

21  
22  
23 Plaintiffs THE STATE OF CALIFORNIA and THE CALIFORNIA DEPARTMENT  
24 OF GENERAL SERVICES allege as follows:

25 **JURISDICTION AND VENUE**

26 1. Plaintiff THE STATE OF CALIFORNIA ("THE STATE") is and was at all times  
27 relevant a sovereign state within the United States of America, and plaintiff THE CALIFORNIA  
28 DEPARTMENT OF GENERAL SERVICES ("DGS") is and was at all times relevant a branch

1 department of the State of California. The DGS has no separate existence from that of THE  
 2 STATE.

3       2. Plaintiffs allege on information and belief that at all times material, defendant  
 4 PACIFIC INDEMNITY COMPANY ("PACIFIC INDEMNITY") is a corporation domiciled in  
 5 the State of Wisconsin and headquartered in the State of New Jersey.

6       3. The matter in controversy exceeds the sum of \$75,000.

7       4. Diversity jurisdiction exists under 28 U.S.C. § 1332(a)(1).

8       5. Venue is proper under 28 U.S.C. § 1333(a)(2) in that a substantial part of the  
 9 events and omissions giving rise to the claims alleged below occurred in this judicial district.

10      6. This court may declare the rights and legal relations of the parties under 28 U.S.C.  
 11 § 2201(a) in that this is a case of actual controversy within the court's jurisdiction.

### **FIRST CLAIM FOR RELIEF**

#### **(Declaratory Relief - Duty to Defend)**

14      7. Plaintiffs reallege and incorporate by reference the allegations contained in  
 15 paragraphs 1-6 of the complaint.

16      8. Plaintiffs allege on information and belief that PACIFIC INDEMNITY is an  
 17 insurance company which provided liability insurance coverage to plaintiffs under Pacific  
 18 Indemnity Policy No. 156300, effective September 20, 1963 to September 20, 1964 (the  
 19 "Policy").

20      9. Plaintiffs allege on information and belief that at all times material, the Policy has  
 21 been in full force and effect, plaintiffs have performed all of their obligations under the Policy or  
 22 have been excused from such performance, and all premiums on the Policy have been paid.

23      10. On or about July 9, 2008, a first-amended complaint entitled *Philip Adame, et al.*  
 24 *v. State of California, et al.*, Civil Action No. 108CV106710, was filed in the Superior Court of  
 25 the State of California in and for the County of Santa Clara (the "Adame action"). The *Adame*  
 26 action states claims against THE STATE, DGS and other defendants for property damage and  
 27 bodily injury resulting from the release and migration of toxic materials allegedly applied to a 17  
 28 acre site from 1921 to the present.

1           11. Plaintiffs promptly notified PACIFIC INDEMNITY in writing of the *Adame*  
 2 action and demanded that PACIFIC INDEMNITY defend plaintiffs against the *Adame* action.

3           12. Under the terms and conditions of the Policy, PACIFIC INDEMNITY was and is  
 4 obligated to defend plaintiffs against the *Adame* action.

5           13. An actual controversy exists between plaintiffs, on the one hand, and PACIFIC  
 6 INDEMNITY, on the other, within the meaning of 28 U.S.C. § 2201, in that plaintiffs contend  
 7 that, under the terms of the Policy and as implied by law, PACIFIC INDEMNITY has a duty to  
 8 defend plaintiffs in the *Adame* action. Plaintiffs are informed and believe that PACIFIC  
 9 INDEMNITY contends to the contrary. A judicial declaration is required to determine the rights  
 10 and obligations of the parties.

11           WHEREFORE, plaintiffs pray for judgment against PACIFIC INDEMNITY as  
 12 follows:

13           14. That the Court declare the rights, obligations and liabilities of the parties and  
 14 declare that PACIFIC INDEMNITY owes a duty to defend plaintiffs in the *Adame* action;

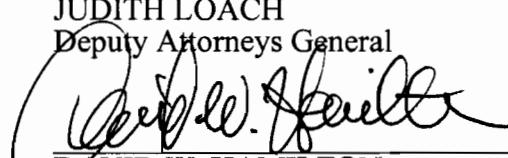
15           15. For costs of suit incurred herein;

16           16. For such other and further relief as the Court deems just and proper.

17           Dated: August 1, 2008

18           Respectfully submitted,

19           EDMUND G. BROWN JR.  
 20           Attorney General of the State of California  
 21           TYLER B. PON  
 22           Supervising Deputy Attorney General  
 23           DAVID W. HAMILTON  
 24           JUDITH LOACH  
 25           Deputy Attorneys General



26           DAVID W. HAMILTON  
 27           Deputy Attorney General

28           Attorneys for Plaintiffs  
 29           THE STATE OF CALIFORNIA and THE CALIFORNIA  
 30           DEPARTMENT OF GENERAL SERVICES